A

PUSHPAM SUBRAMANIAM

v.

MAJLIS PEGUAM MALAYSIA & ANOR

B

HIGH COURT MALAYA, KUALA LUMPUR
RAUS SHARIF J
ABDULL HAMID EMBONG J
ZAINUN ALI J
[CIVIL APPEAL NO. R1-17B-27-2005]

C

12 APRIL 2006

LEGAL PROFESSION: *Professional discipline - Misconduct - Suspension from practice - Appeal against - Discretion of Disciplinary Board - Whether court should interfere - Whether complaint against*

D *appellant fall within provisions of s. 94(4)(c) of Legal Profession Act 1976*

This was an appeal by the appellant, an advocate and solicitor, against the order of the Advocates and Solicitors Disciplinary

E Board ('the Disciplinary Board') which suspended the appellant pursuant to s. 94(4) of the Legal Profession Act 1976 ('the Act'). The brief facts leading to the suspension of the appellant was that a complaint was made against her to the Bar Council that she had misused the complainants' monies deposited with her in the

F client's account. On February 23 2005, the Bar Council referred the matter to the Disciplinary Board for an order under s. 94(4) of the Act. The Disciplinary Board on 11 May 2005 sent a notice for the appellant to appear before them to show cause why an order of suspension ought not be made against her. By letter

G dated 26 May 2005, the appellant wrote to the Disciplinary Board seeking an adjournment of the hearing, which was granted. However, on 24 June 2005, a day before the hearing date, the Disciplinary Board received a letter from the appellant requesting for an adjournment. The request was, however, rejected and the

H Disciplinary Board proceeded with the hearing in the absence of the appellant. The Disciplinary Board granted the order, suspending the appellant from practice pending reference to the Disciplinary Committee as required by the Act. The appellant raised two issues: (1) that she was not afforded an opportunity

I to be heard as the suspension order was made in her absence and (2) that the complaint against her does not fall within the provisions of s. 94(4)(c) of the Act.

Held (dismissing appellant's appeal):

(1) The Disciplinary Board's decision to refuse to an adjournment was a proper exercise of its discretion. The appellant's conduct in requesting for the adjournment at the very last minute and absenting herself at the hearing date, which was fixed at her request, and without confirming whether her last minute request for an adjournment was granted, was irresponsible, a conduct unbecoming of an advocate and solicitor. Thus, we have no reason to interfere with the Disciplinary Board exercise of its discretion. (para 11)

(2) The application by the Bar Council to the Disciplinary Board under s. 94(4)(c) of the Act was akin to an interlocutory application, pending a full and thorough investigation into the complaint by the Disciplinary Committee. The Bar Council was justified in making the application as the complaint against the appellant was an allegation that she had misused her client's money which was a dishonest act. (para 13)

Legislation referred to:
Legal Profession Act 1976, s. 94(4)(c)

For the appellant - R Jegatheesa; M/s RJ Esa & Co
For the 1st respondent - Robert Lazar (Sheila Lingam with him); M/s Shearn Delamore & Co
For the 2nd respondent - S Siva; M/s Cheah Teh Su

Reported by Suhainah Wahiduddin

JUDGMENT

Raus Sharif J:

[1] This is an appeal by the appellant, an advocate and solicitor, against the order of the Advocates and Solicitors Disciplinary Board ("the disciplinary board") which suspended the appellant pursuant to s. 94(4) of the Legal Profession Act 1976 ("the Act") which reads as follows:

> Where an Advocate and Solicitor is subject of a complaint concerning any dishonest act committed by him in his capacity as an Advocate and Solicitor that it would be in the public interest or interest of his clients or of the profession that such Advocate

A and Solicitor be suspended from practice, the Bar Council may apply to the Disciplinary Board for an order suspending such Advocate from practice until further notice.

[2] The brief facts leading to the suspension of the appellant are these. By a letter dated 7 September 2004, one Gengaraju s/o Narayanan and Saraswathy d/o Kottiah ("the complainants") forwarded a complaint against the appellant to the Bar Council. Essentially, the complaint by the complainants was that the appellant had misused their monies deposited with the appellant in the client's account.

[3] By a letter dated 27 September 2004 the Bar Council then sought an explanation from the appellant. There was no response from the appellant, although there was a confirmation of receipt of a letter by the appellant on 30 September 2004. On 12 October 2004 the Bar Council sent a final reminder. The appellant, by a letter dated 18 November 2004 had sought an extension of 14 days to provide her response to the complaint. By a letter dated 18 November 2004, the Bar Council granted the appellant's request for the extension of time. However, no explanation came from the appellant.

[4] On 23 February 2005 the Bar Council referred the matter to the disciplinary board for an order under s. 94(4) of the Act. The disciplinary board on 11 May 2005 had sent a notice for the appellant to appear before them on 28 May 2004 to show cause why an order of suspension ought not be made against her. She was also advised that she could be represented by counsel.

[5] By a letter dated 26 May 2005, the appellant wrote to the disciplinary board seeking an adjournment of the hearing on the basis that she had an urgent personal matter to attend to and suggested the hearing date be fixed on Saturday 25 June 2005. The disciplinary board granted her request for an adjournment and fixed the hearing date on 25 June 2005.

[6] However on 24 June 2005, a day before the hearing date, the disciplinary board received a letter from the appellant dated 23 June 2005 which requested for an adjournment on the ground that she had a criminal hearing before Kuala Lumpur Sessions Court beginning from 27 June 2005. The request for an adjournment however was objected by the Bar Council. Hence, the disciplinary board proceeded with the hearing in the absence of the appellant. After hearing submission from the Bar Council and perusing the

record of complaint, the disciplinary board granted the order, suspending the appellant from practice pending reference to the disciplinary committee as required by the Act.

[7] The Bar Council thereafter published the order in the press in accordance with their standard practice.

[8] Before us, the principal issue raised by the appellant was that she was not afforded an opportunity to be heard as the suspension order was made in her absence. According to her, she was condemned unheard.

[9] We were surprised that this ground of 'no opportunity to be heard' was raised by the appellant. To us, the appellant has herself to be blamed for the order being granted in her absence. Her indifferent and lackadaisical conduct was clear from the start. On 27 July 2004, when the Bar Council sought an explanation on the complaint against her, she failed to respond. She only gave her explanations to the Bar Council on 19 July 2005 and 9 August 2005, long after the disciplinary board had granted the order.

[10] The appellant's indifference was further displayed before the disciplinary board. When her matter was fixed for hearing before the disciplinary board on 28 May 2005 she requested for an adjournment. She requested the adjournment two days before the hearing date. Her request was granted by the disciplinary board and fixed the hearing to 25 June 2005, a date which was requested by her. However, two days before the hearing date she again asked for an adjournment.

[11] On the above facts, we are of the view that the disciplinary board's decision to refuse to an adjournment was a proper exercise of its discretion. To us, appellant's conduct in requesting for the adjournment at the very last minute and absenting herself at the hearing date, which was fixed at her request, and without confirming whether her last minute request for an adjournment was granted, was irresponsible, a conduct unbecoming of an advocate and solicitor. Thus, we nave no reason to interfere with the disciplinary board exercise of its discretion.

[12] Another main issue raised by the appellant was that the complaint against her does not fall within the provisions of s. 94(4)(c) of the Act. According to the appellant, the prerequisite of s. 94(4) of the Act had not been fulfilled to justify the Bar Council to invoke the provisions of the section as there is no dishonest act on the part of the appellant.

[13] With respect, we are unable to agree. We are of the view that the application by the Bar Council to the disciplinary board under s. 94(4)(c) of the Act is akin to an interlocutory application, pending a full and thorough investigation into the complaint by the disciplinary committee. To us, the Bar Council was justified in making the application as the complaint against the appellant was an allegation that the appellant had misused her client's money. Misusing client's money without doubt is a dishonest act.

[14] We are aware that the appellant's interest will be gravely affected by the order of suspension. But the interest of the profession and above all public interest far outweighs the interest of the appellant. Thus, we are unanimous in dismissing the appellant's appeal. But to ensure that the suspension is not longer than is necessary, we also make an order that the appellant's case is to be heard by the disciplinary committee within two months from the date of the order.

[15] Accordingly, the appellant's appeal was dismissed with costs.